IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO. 347 OF 2004

Shri. Vijay Hiralal Jaiswal,
Indian Inhabitant of Mumbai, Proprietor of
M/s. Three Circles, having office at
35, Kanta Niwas, D.J. Road, Vile Parle (West),
Mumbai 400 058. ... Petitioner

Vs.

1.Jawaharlal Nehru Port Trust
constituted under the Major Port
Trust Act, 1963, having office at
Administration Building, Sheva,
Navi Mumbai 400 707.

2. The Chairman,
Jawaharlal Nehru Port Trust, having
his office at Administrative Building,
Sheva, Navi Mumbai 400 707.

3.The Chief Manager, (Port Planning
& Development), Jawaharlal Nehru Port
Trust, having his office at Adminis-
trative Bldg, Sheva, Navi Mumbai 400
707 .Respondents

Mr. H. Toor i/by Lex Consultants for Petitioner.
Mr. Samuel i/by Advani & Co. for Respondent.

CORAM : S.U. KAMDAR,J.
DATED : NOVEMBER 24, 2004

ORAL JUDGMENT :

1. The present petition is filed under Section 14(2) and Section 15(2) of the Arbitration & Conciliation Act, 1996 inter alia contending that the mandate of the term as arbitrator be terminated because of undue delay in proceeding with the appeal proceedings pending before him.

2. A contract executed by and between the Petitioner and Respondent for the construction of accommodation for senior Officers in J.N.P. Township. On 5.7.1995 the work order was issued providing the date of completion as 30.9.1997. However, there were differences and disputes between the parties in the execution of the work. On 1.11.1999 petitioner forwarded their claims to

the respondent. On 16.4.1998 according to Petitioner work was completed. It is the case of the Petitioner that however, payment was withheld because of Central Vigilance Committee enquiry and therefore, the money which was due and payable by the Respondent to the Petitioner were not released.

3. On 11.1.2000 petitioner applied to the Respondent for appointment of an independent arbitrator to adjudicate upon the disputes. However, there was no response from the respondent herein. On 20.6.2000 the petitioner made request to the second respondent to resolve the dispute and appoint an independent arbitrator. However, on 31.09.2000 petitioners were directed to file their claim before the Chief Manager, Respondent No. 3 herein in accordance with and in terms of arbitration Clause 65 contained in the general terms and conditions of the contract. The said Clause 65 which is relevant for the purpose of present petition reads as under :

"DISPUTE BETWEEN THE CONTRACTOR AND EMPLOYER :

Any dispute or difference of any kind whatsoever arising between the employer and the contractor in connection with or arising out of the contract or the execution of the work whether before or after the determination, abandonment or breach of contract will be referred to the Chief Manager (PPD). In the event of

decision of Chief Manager (PPD) not being acceptable to the contractor the matter shall be referred to Chairman, J.N.P.T. whose decision shall be final, conclusive and binding on all parties."

4. Ultimately the Petitioner filed their claim before the third respondent on 20.9.2000. By the award dated 6.8.2001 the third respondent rejected their claim. According to Petitioner, the said award is bad in law since the same was passed without following due process of Law and other requirements including granting of hearing. Further according to the Petitioner, the respondent No. 3 had passed a non-speaking award and rejected the claims of the Petitioner.

. By a letter dated 14.8.2001 petitioner requested respondent No. 3 to give reasons for the said award so as to enable the Petitioner to prefer an appeal before the second Respondent in terms of Clause 65 of the Arbitration Clause as reproduced hereinabove. On 15.8.2001 petitioner addressed a letter to the Chairman of J.N.P.T. who is also appellate authority and second respondent herein. By the said letter, petitioner has inter alia also contended that though the claim of Rs.8.92 lacs. was an admitted claim still third respondent has not been granted the same. It is the case of the Petitioner that along with the said letter dated

15.8.2001 list of claims were forwarded to the second respondent who is chairman as and by way of appeal. By relying upon the said letter dated 15.8.2001 the learned counsel has urged before me that the said letter is an appeal preferred by the Petitioner against an award passed by the respondent NO. 3 in terms of Clause 65 of the contract. It is further urged that thus the appellate authority being respondent No. 2 has failed to act and exercise its power in terms of Clause 65 of the contract. It is further urged that thus there is undue delay as contemplated under Section 14(2) of the Arbitration & Conciliation Act, 1996 in deciding the said appellate arbitration proceedings and therefore, the mandate of respondent No. 2 as an appellate arbitrator should be terminated under Section 14(2) of the Act and independent arbitrator should be appointed by me in exercise of powers under Section 15(2) of the said Act.

. Before me a copy of the letter has been produced of 15.8.2001 along with annexures thereto. I have perused the said original letter dated 15.8.2001.

Annexures thereto provides as under :

Table 1 contains abstracts of outstanding dues.

Table 2 contains statement showing

outstanding dues from J.N.P.T.

Table 3 : contains status of outstanding payment for construction of accommodation in pursuance of this contract.

. On perusal of the said letter dated 15.8.2001 along with annexures which are set out in tabulated form for certain claims, I am unable to hold that the letter dated 15.8.2001 is an appeal against the award of Chief Manager dated 6.8.2001. The said letter dated 15.8.2001 nowhere states that the award dated 5.8.2001 has been challenged by the petitioner herein. ON the contrary the letter dated 15.8.2001 makes a request to the Chairman for appointment of independent arbitrator to resolve disputes between the parties. The letter dated 15.8.2001 proceeds on the footing that the Reference which was made to the General Manager was futile and independent arbitrator should be appointed by the Respondent No. 2 herein and the fresh arbitration proceedings should commence. In view of my finding that a letter dated 15.8.2001 is not an appeal as contemplated under clause 65 of the contract, it cannot be stated that any appeal is pending before the respondent NO. 2 and that there is unreasonable delay in disposing of such an appeal warranting termination of the mandate of the respondent NO. 2 in exercise of powers under Section 14(2) of the Act.

5. The learned counsel for the Petitioner has also contended before me that there is subsequent correspondence including letter dated 13.9.2001 and if all the correspondence is taken into account, then it can tantamount to appeal before the Chairman as contemplated under Clause 65 of the contract. Section 465. I am afraid to hold that letter dated 15.8.2001 is an appeal. I am also not impressed by the argument that the series of correspondence should be taken into account and the same should be treated as an appeal. I therefore, hold that there is no legal and valid appeal pending before the Respondent No. 2 the appellate authority as contemplated under Clause 65 of the contract being an arbitration clause.

6. The learned counsel for the Petitioner has thereafter contended before me by relying upon provisions of Section 18, 19, 21 and 25 of the Arbitration Act, 1996 that the provisions of the aforesaid sections indicates that the appellate Authority can treat any letter filed before him as an appeal. He has further contended that the provisions of C.P.C. does not apply to the arbitration proceedings under Section 19 of the Act and therefore, appeal in any particular format is not necessary to be filed. I am not impressed with the aforesaid argument because even if an appeal is not required to be filed in any particular format,

still from the papers filed it should be possible to construe that it is an appeal challenging the order of Lower authority. From the letter dated 15.8.2001 and/or correspondence subsequent thereto I am not able to hold that an appeal is preferred by the Petitioner against an award of respondent No. 3 and the same is pending before Respondent No. 2. So far as Section 18 is concerned, it only provides for equal opportunity to both the parties and it has no relevance to the present case. Reliance thereafter placed on Section 21 of the Arbitration & Conciliation Act, 1996 has also no application. In my view the provisions of Section 21 only applies at the initial stage of arbitration when the arbitration is invoked and cannot be made available at the appellate stage. Thereafter the learned counsel relied upon Section 25 as well as other provisions of Arbitration Act and vehemently contended that if there was no proper appeal then respondent No. 2 should have called upon the petitioner to file an appropriate appeal. it is further contended that respondent NO. 2 could have also exercised power to amend the appeal under S. 25 of the Act to bring an appeal in appropriate format. In my view the contentions raised has no substance. The question of exercising of power under Section 25 of the Act when no appeal is pending can not arise and therefore, I find that the contention raised by the petitioner relying upon the provision of the Act is devoid of any

merits and I reject the same.

7. In the aforesaid view of the facts I am of the opinion that there is no valid appeal filed by the Petitioner against the order dt. 6.8.2001 of the arbitrator i.e. Chief Manager being Respondent No. 3 herein. In view thereof, it is not possible for me to exercise power under Section 14(2) and terminate the mandate of Respondent No. 3 by holding that there is unreasonable delay on the part of the respondent No. 3 to determine the appeal preferred by the petitioner herein. In view of the same I find no merits in the present petition. Petition dismissed. No order as to costs. C.C. expedited.

(S.U. KAMDAR,J.)